executors living at the time must join in the sale, 3 Day 384.

When a deed was executed by two executors during the lifetime of third and it did not appear that he had given his assent, the deed was held ineffectual as a conveyance. 9 N. Y. S. 389.

General opinion seems to be where one executor acts and it is expressly or impliedly assented to by the others it is valid. *Banus v. Drake,* 50 N. C. 153; *Silverthorn v. McKinister,* 12 Pa. (2 Jones) 67; *Dunn's Ex'rs v. Renick,* 40 W. Va. 549.

RAILROADS—PUBLIC HIGHWAYS—SHIFTING OF CARS.—LONG V. MISSOURI PAC. RY. CO., 91 S. W. (Mo.) 1012.—*Held,* that "shunting" cars and "flying the switch" across public highways without warning is negligence, *per se.*

This doctrine is by no means settled. Some jurisdictions hold that it extends to trespassers where there is no public highway. *Patton v. East Tenn., V. & G. R. Co.,* 89 Tenn. 370. *Contra,—Wright v. Boston & A. R. Co.,* 142 Mass. 396. The general rule seems to be that the question of negligence is to be left to the jury. *Delaware, L. & W. R. Co. v. Converse,* 139 U. S. 469; *Chicago, R. I. & P. R. Co. v. Digman,* 56 Ill. 487. Some jurisdictions hold that contributory negligence on the part of the traveler does not preclude his right of recovery. *Penn R. Co. v. McGirr,* 61 Md. 108. *Contra,—Haley v. N. Y. Central & H. R. R. Co.,* 7 Hun. 84.

RAILROADS—INJURIES TO PEDESTRIANS—LIABILITY TO TRESPASSERS.—BROWN V. BOSTON & M. R. R., 64 ATL. 194 (N. H.). A trespasser, an old and partially deaf woman, while walking on defendant's track was killed by an express train. Neither engineer nor fireman saw trespasser on the track. *Held,* that a railroad company is liable for negligently killing deceased while she was walking by the track, even though she was a trespasser, providing she was in the exercise of due care and the defendant's servants failed to exercise due care to discover her presence in such a situation, when circumstances existed which would have put a person of average prudence on inquiry. Young, J., *dissenting.*

There seems to be no other decided case which carries to such an extent the doctrine promulgated by this case. On the other hand, the weight of authority is to the contrary. The well settled general rule is that railroads are liable for injuries to trespassers only when the railroad has been guilty of gross negligence. *Western & A. R. R. v. Meigs,* 74 Ga. 857; *Richmond & D. R. Co. v. Tay,* 106 N. C. 404. This rule is usually construed to mean that the trespasser in order to recover must show that the persons in charge of the train saw him and after seeing him failed to exercise reasonable diligence to prevent the injuries. *Gherkins v. Louisville & N. R. Co.,* 30 S. W. 651 (Ky.). Another class of cases holds that the only duty a railroad company owes a trespasser is to refrain from wantonly and wilfully injuring him. *Ill. Cent. R. R. v. Eicher,* 202 Ill. 556.

RAILROADS—CROSSING ACCIDENT—CONTRIBUTORY NEGLIGENCE.—SANGUINETTE V. MISS. RIVER, ETC., RY. CO., 95 S. W. 386 (Mo.).—*Held,* where a person, familiar with the railroad crossing, was being driven in a vehicle by another, but did not look for an approaching train, he was guilty of contributory negligence as a matter of law and an action for his death would not lie.